



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Health
VAC Chapter Number:	12 VAC 5-501
Regulation Title:	Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps
Action Title:	Final Adoption
Date:	12/20/04

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Rules and Regulations Governing the Construction of Migrant Labor Camps establish minimum criteria for the construction of migrant labor camps in Virginia. These regulations reference federal regulations that the Department of Health is responsible for enforcing. These regulations include the procedure for obtaining a permit to construct and a permit to operate a migrant labor camp. These regulations also establish minimum construction standards for water supplies serving migrant labor camps, requirements for the collection and disposal of trash and garbage, and storage of hazardous materials.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

All of the changes were made to make the language easier to understand or were made at the request of counsel to update the regulations to be consistent with the Code of Virginia. An example of the latter was to change the maximum civil penalty from \$10,000 to \$25,000 in 12 VAC 5-501-90.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Health adopted the Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps on July 22, 2004 and concurrently repealed the existing regulations (12 VAC 5-500). The effective date of the regulations to be March 1, 2005.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Board of Health is authorized by § 32.1-211 of the Code of Virginia to adopt regulations governing migrant labor camps. Such regulations may include, but need not be limited to, standards governing:

1. The sites of camps.
2. The provision of an adequate and convenient supply of pure water as defined in § 32.1-167.
3. The disposal of sewage as defined in § 32.1-163.
4. The storage and disposal of solid waste.
5. The maintenance of the campgrounds.
6. The construction, maintenance, alteration or remodeling of buildings and structures for the housing of migrant workers and their families, including wash and bathrooms, central cooking facilities, central dining rooms, sleeping quarters, assembly rooms, lighting and ventilation.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations is to ensure that safe and healthy living conditions are provided for migrant workers and their families while they are employed and living in the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The regulations will update the current regulations. Due to the nature and extent of the changes, particularly a re-organization of the regulations, the existing regulations will be repealed concurrently with the effective date of these regulations. The key proposals from the existing regulations include requiring only those migrant labor camps that provide water via their own well, and meet the definition of a waterworks as found in the Virginia Waterworks Regulations and in § 32.1-167 of the Code of Virginia, to construct the well in accordance with the Virginia Waterworks Regulations. Those migrant labor camps that have their own wells but do not meet the definition of a waterworks, well must meet the construction standards of the Private Well Regulations. However, the quality of the water will have to meet the quality standards of the Waterworks Regulations. Another significant proposal is elimination of provisional permits. Provisional permits were once issued to camps that did not fully comply with the regulations but the deficiencies were such that public health was not at risk. The permits were usually issued contingent upon the camp being brought into total compliance. The Federal Department of Labor and Industry does not recognize provisional permits and have levied fines for camps that had only provisional permits. This change will both protect the camp operator from fines and also better protect the camp residents as the camp must fully meet the regulations before they are allowed to occupy the camp. This change is supported by both camp operators and some migrant advocacy groups. Finally, the requirement for bi-weekly inspections is being removed. Bi-weekly inspections, regardless of the compliance record of a migrant labor camp, impose a burden on both the operator and the Department. Camps will still have to comply with the regulations but the Department will have the flexibility to inspect them as frequently as necessary to ensure compliance. This will allow us to focus inspection efforts on those camps with less than adequate compliance histories. All other changes are for clarity and uniformity with other department regulations.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of the regulations to the public is that they will update the current regulations to more modern requirements and reflect changes in other laws or regulations that impact migrant labor camps. The regulations will also eliminate provisional permits that, if issued, subjects the camp owner to fines from the U.S. Department of Labor and Industry as they do not recognized the validity of provisional permits. By removing provisional permits, owners will no longer be subject to these fines and public health of the migrants living in the camps will be better protected as camps will have to fully comply with the regulations to receive a permit. This change was requested by members of the Migrant and Seasonal Farmworkers Board who are migrant labor camp owners or represent growers. The regulations will also eliminate the current requirement for bi-weekly inspections of all camps. Bi-weekly inspections of camps, regardless of the compliance record of the camp, imposes a burden on both the operator and the Department. Camps will still have to comply with the regulations but the Department will have the flexibility to inspect them as frequently as necessary to ensure compliance and the protection of the workers. This will allow the Department to focus inspection efforts on those camps with less than adequate compliance histories. All camps will be inspected during the season of occupancy by workers.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Three public hearings were held across the state. Only one individual appeared and commented on the regulations. The individual supported the adoption of the regulations..

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
501-90 C	\$10,000	\$25,000	Consistency with Code of Virginia
501-330	12 VAC 5-600	12 VAC 5-610	Corrected cross-reference

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations will have a positive impact on migrant families in Virginia. Many migrant workers come to Virginia with their families, some of who will also work, some will not, particularly small children. The regulations will help ensure that the families will live in safe and healthy conditions by setting minimum standards for construction and maintenance of migrant labor camps.